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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>05 November 2007</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3-20 and 22-40* is/are pending in the application.

　　4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1, 3-20 and 22-40* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

　　Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

　　Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

　　a)☐ All　b)☐ Some * c)☐ None of:

　　　　1.☐ Certified copies of the priority documents have been received.

　　　　2.☐ Certified copies of the priority documents have been received in Application No. _____.

　　　　3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

　　* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
　　Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
　　Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

1.   This is in response to the applicant's communication filed on 11/5/07 wherein:

Claims 1, 3-20, and 22-40;

Claims 1, 20, and 39-40 have been amended.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2.   Claims 1, 3-14, 17-20, 22-33 and 36-40 are rejected under 35 U.S.C. 103(a) as

being unpatentable over Calver (2001/0032092) (hereinafter referred to as Calver) in

view of Janssen (6,098,062) (hereinafter referred to as Janssen).

Regarding Claim 1:

Calver discloses an analytical system for facilitating decision making given

a situation by generating and accessing arguments (arguments are interpreted as

being questions based on answers to previous questions) **wherein each argument**

(question) has an associated conclusion as to whether a situation (product or

service) **will likely have a negative or positive result** (information useful in

determining whether service providers would (positive) or would not (negative) benefit

the customer's business (page 7 [0082]), .**the analytical system comprising**:

a database (Figure 2 (50) and page 11 [0127]) *for* storing a plurality of templates

(Figure 4 (98), forms page 4 [0052], criteria Figure 14 (242)) that each include a plurality

of questions which when answered generate a particular argument (question based on answer) having an associated conclusion (solution/ recommendation) regarding a particular situation (product or service) that is based on answers to its associated template questions (Page 5 [0063] new questions based on previous answers); and

a server ((88) page 4 [0049-0051 and 0053], Figure 5]) comprising means for selecting one of the templates which is most relevant to a particular situation (process is generally driven by one or more questionnaires, each preferably followed by increasingly targeted information to match specific business interest (page 5 [0060]); means for receiving input to one or more of the selected template's questions and means for generating a new argument (question based on answer) having an associated conclusion (solution/recommendation) based on such answers (page 5 [0063] new questions based on previous answers), the associated conclusion indicating whether the situation will likely have a positive or negative result (page 7 [0084] informing the customer whether services are beneficial to his or her business (positive); (information useful in determining whether service providers would (positive) or would not (negative) benefit the customer's business (page 7 [0082]).

associating supporting evidence to each answered template question (page 6 [0071] pages 7-8 [0084]- the customer can be additionally presented with the option to link pages containing product information from the respective providers. Such information may include....)

means for determining a conclusion supported by said answers, said conclusion indicating whether the given situation will likely have a positive or negative result

(wherein each argument (question) **has an associated conclusion as to whether a situation** (product or service) **will likely have a negative or positive result** (information useful in determining whether service providers would (positive) or would not (negative) benefit the customer's business (page 7 [0082]);

  means for publishing new argument for review (Figure 1 (34).

  The applicant is advised that applicant's invention is directed to a system. Calver discloses a system with a database and a server. The intended use of the structure of a system is generally given little patentable weight as long as the prior art system is capable of performing the function and thus does not distinguish the system from the prior art. An apparatus/system must be distinguished from the prior art in terms of structure rather than function alone (MPEP 2114). The database and server of Calver are fully capable of performing the functions as set forth in the claim language.

  While Calver discloses a customer being presented with the option to link pages containing product information from the respective providers [0084], Calver does not explicitly disclose a means for associating said supporting evidence with the answers or generating a new argument having the associated conclusion based on such answers

  However, Janssen discloses an invention that provides a means for associating said supporting evidence with the answers or generating a new argument having the associated conclusion based on such answers *(a program and method for facilitating decision-making, and more particularly, the present invention relates to a computer program, system, and method that accepts inputs that bear on a decision in a structured format from a plurality of sources and arranges the inputs in a hierarchical*

structure that permits an evaluation of the inputs as they relate to the decision (col. 1,

lines 14-20); a system and method that can facilitate decision-making, particularly

when the decision-making utilizes for support a large number of sources. It is a further

object, to provide a method wherein scientific assessment can be effectively utilized in

a decision-making process. The present invention provides a system and method for

facilitating a decision-making process comprising a computer program that causes

linkage of data representing a plurality of argument structure units into a hierarchical

argument structure. Each argument structure unit comprises data corresponding to a

hypothesis and its corresponding counter-hypothesis, data corresponding to grounds

that provide a basis for inference of the hypothesis or its corresponding counter-

hypothesis, data corresponding to a warrant linking the grounds to the hypothesis or its

corresponding counter-hypothesis, and data corresponding to backing that certifies the

warrant. The hierarchical argument structure comprises a top level argument structure

unit and a plurality of subordinate level argument structure units. Each of the plurality

of subordinate argument structure units comprises at least a portion of the grounds of

the argument structure unit to which it is subordinate. Program code located on each

of a plurality of remote computers accepts input from one of a plurality of

contributors. Each input comprises data corresponding to an argument structure

unit in the hierarchical argument structure and supports the hypothesis or its

corresponding counter-hypothesis. A second programming code is adapted to

combine the inputs into a single hierarchical argument structure. A third

computer program code is responsive to the second computer program code and is

adapted to represent a degree of support for the hypothesis and its

corresponding counter-hypothesis in the single hierarchical argument structure (col. 6,

lines 25-61).

It would have been obvious to one of ordinary skill in the art at the time of the

invention to incorporate into the decision support system of Calver the evidence

generating taught in Janssen so that arguments being put forth by experts can be

effectively captured with the grounds (data with references) upon which conflicting

claims of the experts are based and with the claims properly lined to the supporting

data so as to aid in making sound policy decision.

Regarding Claim 20 and 39

Calver discloses a method and medium containing program instructions

(software module page 9 [0100]) **for accessing or generating an argument** (questions

based on previous answers) **having a conclusion** (solution) **for a particular situation**

(web-based solutions page 4 [0054], provides products and solutions), **the method**

comprising:

providing to a user a plurality of searchable templates, wherein each template

includes a plurality of questions (Abstract – user-provided information is complied via an

interactive template (Figure 16) [0052] terms or keywords, search engine [0061][0065]

[0067]);

searching a plurality of templates (Figure 4 (98) filling out of forms (page 4

[0052]) /lead generation (page 5 [0060]) pre-qualifying templates (page 5 [0061], Figure

14 (242) criteria) **for a relevant template most related to a particular situation**

(Figure 12 (214) industry/business/product information), **wherein each template includes a plurality of questions** (Figure 12 (216) general questions, page 5 [0060] questionnaires [0061-0063] [0070]);

receiving from said user a selection of one of said templates, said one of said templates being a relevant template most related to the given situation (Figure 16 (324) (326) (328));

receiving from the user one or more answers to one or more questions of the relevant template [0060] one or more questionnaires followed by increasingly targeted product information pages; as users pass through a series of interactive steps, the information they receive can be narrowed to match their specific business interest, thus the questions asked them can become more direct; [0063]product configurator dynamically presents the user with new questions based on previous answers so that the user does not have to answer any irrelevant or redundant questions);

answering one or more questions of the relevant template to form a new argument (question based on answer) **having a conclusion** (solution (page 4 [0054]) and resulting information (page 7 [0084] informing customer of services by various providers and whether such services are beneficial to his or her business) **based on the one or more answers** (page 5 [0062-0062] The Product Configurator dynamically presents the user with new questions based on previous answers); and

associating supporting evidence received from said user to each answered template question (pages 7-8 [0084]- the customer can be additionally presented with

the option to link pages containing product information from the respective providers.

Such information may include....);

    determining a conclusion supported by said answers, said conclusion indicating

whether the give situation will likely have a positive or negative result (**wherein each**

argument (question) **has an associated conclusion as to whether a situation**

(product or service) **will likely have a negative or positive result** (information useful in

determining whether service providers would (positive) or would not (negative) benefit

the customer's business (page 7 [0082]);

    forming a new argument supporting the conclusion (question based on answer)

having an associated conclusion (solution/recommendation) based on such answers

(page 5 [0063] new questions based on previous answers), the associated conclusion

indicating whether the situation will likely have a positive or negative result (page 7

[0084] informing the customer whether services are beneficial to his or her business

(positive); (information useful in determining whether service providers would (positive)

or would not (negative) benefit the customer's business (page 7 [0082]);

    publishing the new argument for review ([0021] providing user-tailored

information to a user via a web-based portal).

    While Calver discloses a customer being presented with the option to link pages

containing product information from the respective providers, said information

containing case studies, testimonials, descriptions, glossary of terms, calculators,

applications, tutorials, training programs, and so forth [0084] and the user seeking

additional information [0071], Calver does not explicitly disclose a means for associating

said supporting evidence with the answers or generating a new argument having the associated conclusion based on such answers

However, Janssen discloses an invention that provides a means for associating said supporting evidence with the answers or generating a new argument having the associated conclusion based on such answers *(a program and method for facilitating decision-making, and more particularly, the present invention relates to a computer program, system, and method that accepts inputs that bear on a decision in a structured format from a plurality of sources and arranges the inputs in a hierarchical structure that permits an evaluation of the inputs as they relate to the decision (col. 1, lines 14-20); a system and method that can facilitate decision-making, particularly when the decision-making utilizes for support a large number of sources. It is a further object, to provide a method wherein scientific assessment can be effectively utilized in a decision-making process. The present invention provides a system and method for facilitating a decision-making process comprising a computer program that causes linkage of data representing a plurality of argument structure units into a hierarchical argument structure. Each argument structure unit comprises data corresponding to a hypothesis and its corresponding counter-hypothesis, data corresponding to grounds that provide a basis for inference of the hypothesis or its corresponding counter-hypothesis, data corresponding to a warrant linking the grounds to the hypothesis or its corresponding counter-hypothesis, and data corresponding to backing that certifies the warrant. The hierarchical argument structure comprises a top level argument structure unit and a plurality of subordinate level argument structure units. Each of the plurality*

of subordinate argument structure units comprises at least a portion of the grounds of

the argument structure unit to which it is subordinate. Program code located on each

of a plurality of remote computers accepts input from one of a plurality of

contributors. Each input comprises data corresponding to an argument structure

unit in the hierarchical argument structure and supports the hypothesis or its

corresponding counter-hypothesis. A second programming code is adapted to

combine the inputs into a single hierarchical argument structure. A third

computer program code is responsive to the second computer program code and is

adapted to represent a degree of support for the hypothesis and its

corresponding counter-hypothesis in the single hierarchical argument structure (col. 6,

lines 25-61).

It would have been obvious to one of ordinary skill in the art at the time of the

invention to incorporate into decision support method and medium of Calver the

evidence generating taught in Janssen so that arguments being put forth by experts

can be effectively captured with the grounds (data with references) upon which

conflicting claims of the experts are based and with the claims properly lined to the

supporting data so as to aid in making sound policy decision.

Regarding Claims 4 and 22:

Calver discloses a method and system further comprising associating a rationale

to each answered template question (pages 7 [0074] industry specific information and

resources).

Regarding Claims 3 and 23

Calver discloses a method and system wherein each template's questions are

formed in a hierarchical structure, wherein a parent question that has a plurality of

children questions may be automatically answered by answering the parent's children

(The Product Configurator page 5 [0063] –contents of the Product Configurator can be

modular, based on responses of the user to previous questions (parent). The Product

Configurator dynamically presents the user with new questions (child) based on

previous answers (parent)).

Regarding Claims 5 and 24:

Calver discloses a method and system wherein input to one or more of the

selected template's questions may be received from a plurality of users over a computer

network (page 5 [0059] multiple user interactive sections, Figure 5).

Regarding Claims 6 and 25:

Calver discloses a method and system further comprising allowing one or more

of the users to associate comments (recommendations) to at least a portion of the new

argument (solution/product (Figure 8 (135-143), page 9 [0098] product and related

recommendation).

Regarding Claims 7 and 26:

Calver discloses a method and system wherein the comments are only

accessible by one or more specified users (Figure 8 9135-1430 and page 9 [0098]).

Regarding Claims 8 and 27:

Calver discloses a method and system wherein each template question is a

multiple choice question (page 7 [0081] a graphically displayed drop down list or an

actual number that is compared against *a list or ranges may be graphically displayed*
(multiple choice) for the user, page 7 [0082] credit data can be entered by a graphically
displayed check list (multiple choice), test entry box or drop down list (multiple choice).

Regarding Claims 9-10 and 28-29:

Calver does not disclose a method and system wherein each multiple choice
question asks to what degree of likelihood will a particular factor related to the particular
situation have a positive or negative result or wherein each multiple choice question has
a categorical scale of likelihood represented by a set of answers that partition the
likelihood scale

However, it is old and well known to ask provide preferences or degrees of
likelihood in the form of multiple choice questions, such as, I agree, I agree somewhat, I
disagree, I strongly disagree, It is unlikely, It is probable.

Therefore, it would have been obvious to one of ordinary skill in the art at the
time of the invention to include multiple choice questions which ask to what degree of
likelihood with a categorical scale of the likelihood that a particular factor related to a
situation would have a positive or negative result since a skilled artisan would have
recognized that this practice identifies more specifically what product or service would
or would not be most beneficial to a customer's business, best suit the customer's
needs and provide the greatest interest and utility to the user.

Regarding Claim 11 and 30:

Calver discloses a method and system wherein each template's questions are
formed in a hierarchical structure, wherein a parent question that has a plurality of

children questions may be automatically answered by answering the parent's children

(The Product Configurator page 5 [0063] –contents of the Product Configurator can be

modular, based on responses of the user to previous questions (parent). The Product

Configurator dynamically presents the user with new questions (child) based on

previous answers (parent))

Regarding Claims 12 and 31:

Calver discloses a method further comprising providing more than one answer

for at least one question (Figure 10 (184-192), page 5 [0057] for the customer the

system may provide access to multiple products through one point of contact; allows

customers to answer basic questions about products and services)

Regarding Claims 13 and 32:

Calver discloses a method wherein the parent question is automatically

answered using a answering technique selected by a user (portal functionality (multiple

user interaction sections; page 6 [0069] – while viewing the web based portal

homepage, the user may be faced with the option of directly filling out a Pre-Qualified

Template questionnaire; page 6 [0070] Product Oriented – if the product orientation

format is selected.... Figure 6 and descriptions on page 6 [0068])

Regarding Claims 14 and 33:

Calver discloses a method and system wherein the answering technique *may be*

selected from a group consisting of a maximization technique, an averaging technique,

and a minimization technique (maximization techniques - Figure 13 (236) Management

Best Practices- Documentation regarding best practices in small businesses; page 12 {0133].

Regarding Claims 17 and 36:

Calver discloses a method and system wherein one or more template questions have an associated discovery tool that facilitates answering of such associated template question (pages 7-8 [0084]- the customer can be additionally presented with the option to link pages containing product information from the respective providers. Such information may include, for example, case studies, testimonials, descriptions....and so forth.).

Regarding Claims 18 and 37:

Calver discloses a method and system wherein each template is associated with a situation descriptors (page 10 [0107] range of categories), the method and system further comprising selecting one of the templates which is most relevant to a particular situation by comparing a current situation to the situation descriptors associated with the templates to thereby find the most relevant templates having the most closely matching situation descriptors (page 10 [0107] applicant interested in Loans category will find products and services offered by financial providers, Credit category will offer products and services offered by credit providers).

Regarding Claims 19 and 38:

Calver discloses a method and system further comprising creating a new template, wherein the new template is created by an expert (.page 11 [0127] business

rules – method and system make decisions and solves problems by using knowledge

and rules defined by experts, ie business rules).

Regarding Claims 40:

Calver discloses a computer system operable to access or generate an

argument (question based on answer) **having a conclusion** solution/recommendation)

for a particular situation (product or service), **the computer system comprising**:

one or more processors (Figure 2(31), page 3 [0040-0041]);

one or more memory (Figure 2 (50)) wherein at least one of the processors and

memory are adapted to:

search a plurality of templates for a relevant template most related to a

particular situation, wherein each template includes a plurality of questions (Figure 16);

and

receive answer one or more questions of the relevant template to form a new

argument having a conclusion based on the one or more answers (new questions

based on previous answers, page 5[0063]); and

associating supporting evidence to each answered template question (pages 7-8

[0084]- the customer can be additionally presented with the option to link pages

containing product information from the respective providers. Such information may

include....).

The applicant is advised that Calver discloses a system with processors and

memory. The language "adapted for" is generally given little patentable weight in an

apparatus/system and thus does not distinguish the system form the prior art.   An

apparatus/system must be distinguished from the prior art in terms of structure rather than function alone (MPEP 2114). The database and server of Calver are fully capable of performing the functions as set forth in the claim language.

While Calver discloses a customer being presented with the option to link pages containing product information from the respective provides [0084], Calver does not explicitly disclose a means for associating said supporting evidence with the answers or generating a new argument having the associated conclusion based on such answers

However, Janssen discloses an invention that provides a means for associating said supporting evidence with the answers or generating a new argument having the associated conclusion based on such answers. *(a program and method for facilitating decision-making, and more particularly, the present invention relates to a computer program, system, and method that accepts inputs that bear on a decision in a structured format from a plurality of sources and arranges the inputs in a hierarchical structure that permits an evaluation of the inputs as they relate to the decision (col. 1, lines 14-20); a system and method that can facilitate decision-making, particularly when the decision-making utilizes for support a large number of sources. It is a further object, to provide a method wherein scientific assessment can be effectively utilized in a decision-making process. The present invention provides a system and method for facilitating a decision-making process comprising a computer program that causes linkage of data representing a plurality of argument structure units into a hierarchical argument structure. Each argument structure unit comprises data corresponding to a hypothesis and its corresponding counter-hypothesis, data corresponding to grounds*

that provide a basis for inference of the hypothesis or its corresponding counter-hypothesis, data corresponding to a warrant linking the grounds to the hypothesis or its corresponding counter-hypothesis, and data corresponding to backing that certifies the warrant. The hierarchical argument structure comprises a top level argument structure unit and a plurality of subordinate level argument structure units. Each of the plurality of subordinate argument structure units comprises at least a portion of the grounds of the argument structure unit to which it is subordinate. Program code located on each of a plurality of remote computers accepts input from one of a plurality of contributors. Each input comprises data corresponding to an argument structure unit in the hierarchical argument structure and supports the hypothesis or its corresponding counter-hypothesis. A second programming code is adapted to combine the inputs into a single hierarchical argument structure. A third computer program code is responsive to the second computer program code and is adapted to represent a degree of support for the hypothesis and its corresponding counter-hypothesis in the single hierarchical argument structure (col. 6, lines 25-61).

It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate into decision support system of Calver the evidence generating taught in Janssen so that arguments being put forth by experts can be effectively captured with the grounds (data with references) upon which conflicting claims of the experts are based and with the claims properly lined to the supporting data so as to aid in making sound policy decision.

3.   Claims 15-16 and 34-35 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Calver and Janssen as applied to claims 1 and 20 above, and further

in view of Grosser.

Regarding Claims 15 and 34:

Neither Calver nor Janssen disclose a method wherein each answer within the

hierarchical structure has a color selected from a subset of colors, each color

representing a different answer so that the hierarchical structure's colors convey a line

of reasoning.

However, Grosser discloses highlighting the most important sub-decisions (*The*

computer-aided decision-making system and methods employ a rules-based analysis

engine having a plurality of rules for selecting, scoring and ranking a plurality of

subchoices. A user interface accepts user-provider information, promotions, and

responses to system inquires for generating reports, proposals and feedback. The

invention provides immediate, useful, and relevant information to a person in a decision-

making context, overcoming common human cognitive problems that occur in decision-

making making, and enabling consumer purchases in an on-line sales environment. In

particular, aspects of the invention that aid a person in decision-making include, but are

not limited to: managing all the sub-decisions, educating the decision-maker,

highlighting the most important sub-decisions, *offering the most viable proposals for*

evaluation, distinguishing significant differences between proposals, supplying various

evaluation tools, preventing blind spots, assisting the decision-maker's memory,

gauging the progress of the decision process, and learning about the decision maker

from the decision process (col. 1, line 61 thru col. 2, line 13).

It would have been obvious to incorporate into the decision support·system and

method of Calver and Janssen the ability to highlight sub-decisions as taught in

Grosser so that the "more preferable" proposals can be quickly identified.

Regarding Claims 16 and 35:

Calver discloses a method and system wherein one or more template questions

is associated with a second hierarchical structure of questions and the first and second

hierarchical structures together form a set of cascaded arguments (questions) (page 5

[0063] questions based upon answers to above questions).

Response to Arguments

4.   Applicant's arguments filed 11/5/07 have been fully considered but they are not

persuasive.

The amended claim language does not provide claim limitations that overcome

the rejections of record. There is still no language requiring the computer to somehow

use the supporting evidence or even provide the supporting evidence, much less

associate the supporting evidence and then generating a new argument supporting an

associated conclusion, the argument based on the answers. The Examiner withdraws

the 112 rejections based on applicant's detailed description of the invention on pages

11-13 of the Remarks submitted on 11/5/07.

The Examiner directs the applicant to applicant's own specification wherein the

applicant identifies the invention as follows:

[0010] Accordingly, specific embodiments of the present invention provide an apparatus and method for facilitating decision making. In general terms, the present invention is **based on the concept of a structured argument having a plurality of questions** that are used to assess whether an opportunity or threat of a given type is imminent. **These questions are called the argument's template** (as opposed to the argument, which is an instantiation of the template). In one implementation, the structured argument is based on a hierarchically organized set of questions (e.g., a tree structure).

The Examiner asserts that Calver discloses the concept of a structure argument

having a plurality of questions. Thus, because Calver has questions, as set forth

by applicant above, these questions are called the argument's template.

In response to applicant's arguments against the references individually, one

cannot show nonobviousness by attacking references individually where the rejections

are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208

USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir.

1986). It is the combination of Calver and Janssen that teach applicant's claim

limitations.

As for applicant's argument that Calver teaches away from combining the

teachings of Calver with Janssen, the Examiner directs the applicant to Dystar

Textilfarben GMBH & CO Deutschland KG v. C.H. Patrick CO., and Bann Quimica

LTDA (Fed Cir, 06-1088, 10/3/2006), wherein the court held:

103 - Teaching Away - Omission of a teaching is not a teaching away

b. Does the prior art teach away from the claimed invention?

We reject DyStar's assertion that contemporaneous articles by Wimmer and Brochet teach away from the combination of Brochet and Chaumat, and thus the claimed process. DyStar acknowledges that no specific language in these references teaches away from the invention of the '992 patent. Rather, because these references do not discuss the stabilization of leuco indigo solution (in solution form) for immediate addition to a dyebath, DyStar somehow concludes that these references teach that leuco indigo solution "cannot be used to dye but is instead useful only as an intermediate."

Although Wimmer's contemporaneous article only describes the use of indigo solution as an intermediate product, he does not retract his patent language indicating that "the solution can be filtered and the filtrate (which contains a high percentage of indigo white) can be placed on the market without any further treatment". Wimmer, II.33-37. Likewise, the Brochet patent, directed toward all vat dyestuffs, broadly teaches that the process "produce[s] mother-liquors which can be diluted immediately before use, or be treated by evaporation under reduced pressure or by any other means to obtain concentrated products for sale." Brochet, II.66-70. This language implies that all vat dyestuffs, including indigo, may either be used immediately for dyeing or concentrated prior to sale. In his contemporaneous article, Brochet stated that his catalytically hydrogenated solution could be used "economically to obtain concentrated indigo white [i.e., leuco indigo] solutions that are free of impurities and alkaline salts, that can be concentrated in vacuum in order to obtain white indigo as a paste". This mere failure to discuss immediate use of his leuco indigo solution for dyeing is not the same thing as Brochet stating in his article that, though most dyestuffs may be used immediately or stored in oxygen-excluding containers, his leuco indigo solution may only be concentrated in paste form. *We will not read into a reference a teaching away from a process where no such language exists.*

The Examiner asserts that a reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be lead in a direction divergent from the path that was taken by appellant. A reference will teach away if it suggests that the line of development flowing from the reference's disclosure is unlikely to be productive of the result sought by the appellant. See *In re Gurley* (CAFC) 31 USPQ2d 1130. The Examiner submits that there is nothing in Calver that discourages the combination with Janssen. Omission of a teaching is not teaching away as is set forth by the CAFC in

Dystar Textilfarben GMBH & CO Deutschland KG v. C.H. Patrick CO., and Bann Quimica LTDA (Fed Cir, 06-1088, 10/3/2006).

As for other arguments, the Examiner has reviewed the applicant's arguments but maintains the rejections.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time
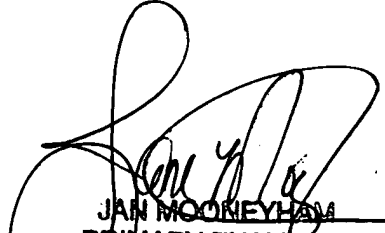
policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JANICE A. MOONEYHAM whose telephone number is (571)272-6805. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JAN MOONEYHAM
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TECHNOLOGY CENTER 3600